



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2012-0629]

RIN 1625-AA08

Special Local Regulation; Battle on the Bay Powerboat Race

Atlantic Ocean, Fire Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the navigable waters of the Atlantic Ocean off Smith Point Park Fire Island, NY during the Battle on the Bay Powerboat Race. This action is necessary to provide for the safety of life of participants and spectators during this event. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective August 25 and 26, 2012 and will be enforced from 7 a.m. through 7 p.m. each day.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0629]. To view documents mentioned in this

preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4544, Joseph.L.Graun@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Battle on the Bay Powerboat Race has had three separate rulemakings prior to this rule listed here in chronological order.

On September 3, 2008 the Coast Guard published a final rule entitled, Safety Zone; Patchogue Bay, Patchogue, NY, in the Federal Register (73 FR 51367) establishing a safety zone on Patchogue Bay, Patchogue, NY in 33 Code of Federal Regulation (CFR) 165.158 for the Battle on the Bay Powerboat Race. No comments or requests for public meeting were received during the rulemaking.

On July 6, 2011 the Coast Guard published a temporary final rule entitled, Special Local Regulations & Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone in the Federal Register (76 FR 39292) establishing a special local regulation on the Great South Bay, Islip, NY in 33 CFR 100.T01-0550 for the Battle on the Bay Powerboat Race.

On February 10, 2012 the Coast Guard published a final rule entitled, "Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone" in the Federal Register (77 FR 6954) establishing a special local regulation on Patchogue Bay, Patchogue, NY in 33 CFR 100.100 for the Battle on the Bay Powerboat race. No comments or request for a public meeting were received during the rulemaking process.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a

rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule; any delay encountered in this regulation's effective date caused by publishing an NPRM would be contrary to public interest since immediate action is needed to protect both spectators and participants from the safety hazards created by this event.

We spoke with the event sponsor for Battle on the Bay Powerboat Race. They indicated they are unable to reschedule the event because the powerboats that will be racing in the event are part of a traveling circuit with a schedule established more than a year ahead of time, the earliest opportunity to reschedule the event is 2013. Earlier this year, the sponsor was attempting to secure a new location for the event. After months of meetings with different towns and filing permits the sponsor received approval to hold the event in Suffolk County. When the agreement was finally reached on May 4, 2012 the Coast Guard was provided 110 days notice - an insufficient amount of time to publish an NPRM (and subsequent FR) for a new event location. The sponsor is now aware of the requirements for submitting a new marine event application 135 days in advance and has agreed to comply in the

future.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1233 and Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations.

This temporary rule establishes a special local regulation in order to provide for the safety of life on navigable waters during the Battle on the Bay Powerboat Race.

C. Discussion of the Final Rule

On Saturday August 25, 2012 and Sunday August 26, 2012 from 7 a.m. until 7 p.m. Great South Bay Racing Inc. will be sponsoring the Battle on the Bay Powerboat Race, an offshore powerboat racing regatta. The event will be held on the Atlantic Ocean off Smith Point Park, Fire Island, NY and will feature six classes of offshore powerboats including vessels from the Extreme Class which can reach speeds exceeding 200 miles per hour. The sponsor expects a minimum of 5,000 spectators for this event with a portion of them expected to view the event from recreational vessels.

The COTP Sector Long Island Sound has determined the combination of increased numbers of recreation vessels, and vessels racing at high speeds has the potential to result in serious injuries or fatalities. This special local regulation

temporarily establishes regulated areas to restrict vessel movement around the location of the regatta to reduce the risk associated with congested waterways. For these reasons the Coast Guard is establishing three temporary regulated areas on the Atlantic Ocean, from August 25, 2012 through August 26, 2012:

(1) Regatta Course Area. This area is for the exclusive use of registered regatta participants, safety and support vessels.

(2) No Entry Area.

(3) Spectator Viewing Area. This area is for the exclusive use of spectator vessels. The sponsor will mark this area with white striped blue buoys.

The geographic locations of these regulated areas and specific requirements of this rule are contained in the regulatory text.

Because a number of spectator vessels are expected to congregate around the location of this event, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including powerboats traveling at high speeds. During the enforcement periods, persons and vessels are prohibited from entering, transiting through, remaining, anchoring or mooring within the regulated areas unless stipulated otherwise or specifically authorized by the COTP or the designated representative. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of

these regulated areas.

The Coast Guard determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas.

The Coast Guard has ordered special local regulations and safety zones for this event taking place in different locations in the past and has received no public comments or concerns regarding the impact to waterway traffic. Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses of many of these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The regulated areas are of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Persons or vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated

areas August 25 and 26, 2012 from 7 a.m. until 7 p.m.

This temporary special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated areas are of limited size and of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves the establishment of a special local regulation. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recording requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.35T01-0629 to read as follows:

§ 100.35T01-0629 Special Local Regulation; Battle on the Bay Powerboat Race Atlantic Ocean, Fire Island, NY.

(a) Regulated Areas. All coordinates are North American Datum 1983 (NAD 83).

(1) "Regatta Course Area": all navigable waters of the Atlantic Ocean off Smith Point Park within the following boundaries: Beginning at point "A" at position 40°43'42"N, 072°51'57" W, then south to point "B" at position 40°43'17" N, 072°51'43" W, then east to point "C" at position 40°43'40" N, 072°50'23" W, then east to point "D" at position 40°44'5" N, 072°49'0" W, then north to point "E" at position 40°44'31" N, 072°49'10" W then following the shoreline west to the point of origin point "A".

(2) "No Entry Area": a buffer zone comprising all navigable waters of the Atlantic Ocean extending 500 feet outwards from the border of the "Regatta Course Area" described above.

(3) "Spectator Viewing Area": all navigable waters of the Atlantic Ocean between 500 feet and 1,000 feet outward from the portion of the southern boundary of the "Regatta Course Area" between the center of the course marked by point "C" and the eastern boundary marked by point "D". The sponsor will mark this area with white striped blue buoys.

(b) Special Local Regulations.

(1) In accordance with the general regulations found in § 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound, or designated representative.

(2) All persons and vessels are authorized by the COTP Sector Long Island Sound to enter areas of this special local regulation in accordance with the following restrictions:

(i) "Regatta Course Area": access is limited to registered regatta participants, safety and support vessels, and official vessels.

(ii) "No Entry Area": access is limited to safety and support vessels, official vessels, and registered regatta participants when actively transiting into or out of the "Regatta Course Area".

(iii) "Spectator Viewing Area": access is limited to spectator vessels engaged in watching the event.

(3) All persons and vessels shall comply with the instructions of the COTP Sector Long Island Sound or designated representative. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP Sector Long Island Sound by telephone at (203)-468-4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through,

anchor in, or remain within the regulated areas is granted by the COTP Sector Long Island Sound or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Sector Long Island Sound or designated representative.

(5) The Coast Guard will provide notice of the regulated areas prior to the event through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) Enforcement Period: This section will be enforced from 7:00 a.m. until 7:00 p.m. on both August 25, 2012 and August 26, 2012.

Dated: July 10, 2012

J. M. Vojvodich
Captain, U. S. Coast Guard
Captain of the Port Sector Long Island Sound

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Date: 07/24/2012]